

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL ERBY,
on behalf of himself and all
others similarly situated,

Plaintiff,

V.

CASE NO. 2:18-cv-04944-PBT

ALLSTATE FIRE & CASUALTY
INSURANCE COMPANY

Defendant.

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant, Allstate Fire & Casualty Insurance Company (“Allstate”) hereby submits this Notice of Supplemental Authority in support of its January 21, 2020 Motion for Reconsideration of the Court’s Order Denying Allstate’s Motion to Dismiss Plaintiff’s Unfair Trade Practices Consumer Protection Law Claim (“UTPCPL”), as follows:

1. Allstate offers the attached decision issued on February 7, 2020 by the Pennsylvania Superior Court in *Wenk v. State Farm Fire and Casualty Company, et al.*, No. 1284 WDA 2018, 2020 Pa. Super. LEXIS 86 (Pa. Super. Feb. 7, 2020), as supplemental authority in support of its Motion for Reconsideration of the Court's Order Denying Allstate's Motion to Dismiss Plaintiff's UTPCPL Claim (ECF No. 23) (A copy of the opinion is attached hereto as Exhibit A).

2. The *Wenk* case involved claims by plaintiffs Jeffrey and Lee Ann Wenk that their homeowners' insurer, State Farm, acted in bad faith and violated the UTPCPL in the handling of their property damage claim.

3. The Wenks presented an insurance claim to State Farm after a contractor contaminated their home with gasoline.

4. The Wenks alleged deceptive and misleading conduct by State Farm during the handling of the claim, including misrepresentations to the insureds that their home was structurally sound when it was not.

5. The trial court found in favor of State Farm and against the Wenks on their UTPCPL claim noting that claims under the statute are “not amenable to claims which are, in substance, principally assertions of inappropriate claims handling by insurance companies, because claims handling is not a consumer transaction of the nature intended to be protected by under the [UTPCPL].” Ex. A, at *21-22.

6. The trial court held that the UTPCPL applies to consumer transactions, which are statutorily defined and the handling of an insurance claim does not meet the statutory definition. *Id.* at *24.

7. On appeal, the Pennsylvania Superior Court was asked to determine whether an insurance company’s handling of a claim is the type of consumer transaction intended to be protected under the UTPCPL.

8. The *Wenk* Court affirmed the ruling of the trial court and held as a matter of law that “[t]he UTPCPL applies to the **sale** of an insurance policy, it does not apply to the **handling** of insurance claims, as alleged herein.” *Id.* at *20.

9. The *Wenk* Court relied upon the case of *Neustein v. Government Employees Insurance Co.*, 2018 WL 6603640 (W.D. Pa. Nov. 29, 2018), which held that the UTPCPL only applies to an insurer’s pre-formation conduct and that Pennsylvania’s bad faith statute (42 Pa. C.S. § 8371) provides the exclusive statutory remedy applicable to claims handling. *Id.*

Dated: 2/12/20

Respectfully submitted,

COZEN O’CONNOR

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CERTIFICATE OF SERVICE

I, Katharine Mooney, Esquire, hereby certify on February 12, 2020, I caused a true and correct copy of the foregoing Notice of Supplemental Authority to be served upon all counsel of record via the Clerk of Court by using the CM/ECF system, which will automatically send email notification of such filing to all counsel of record for the parties.

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